



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 352 OF 2023

**NILOFAR SHAIKH SALIM DESHMUKH & ANR
VS
SHAIKH SALIM SHAIKH DESHMUKH**

Mr. Y. D. Kale, Advocate for the applicant
Mr. V. P. Raje, Advocate for the respondent

CORAM : ABHAY J. MANTRI, J.

DATE : 06th OCTOBER, 2025

ORAL JUDGMENT :

1. The applicants, the wife and adopted daughter, being dissatisfied with the judgment and order dated 09-10-2023, passed by the learned Judge, Family Court, Dhule, in Petition No. E-102/2019, whereby the petition was partly allowed and the husband was directed to pay the maintenance amount of Rs. 3000/- per month, have preferred this revision application.

2. Heard the learned advocates for both parties. Perused the impugned judgment and record.

3. At the outset, it appears that applicant No. 1 is the wife of respondent, who filed a petition before the learned Family Court for the grant of maintenance under Section 125 of the Criminal Procedure Code (for short- *Cr. P. C.*). After considering the evidence on record, the learned Family Court held that the respondent is liable

to pay maintenance of Rs. 3000/- to applicant No.1 and partly allowed the application accordingly.

4. It is pertinent to note that the respondent does not dispute his relationship with applicant No. 1, as his wife. However, he categorically denied his relationship with the applicant No. 2. The learned advocate of the applicants vehemently contended that the applicant No. 2 is an adopted daughter of the applicant No.1 and the respondent. However, he failed to point out any documents from the record except the notification produced by him. In fact, it was incumbent on the applicants to produce a copy of the adoption deed or any other documents to show that the respondent had adopted applicant No. 2 as his daughter. As such, an adverse inference can be drawn against them for the non-production of any document. The learned Family Court has rightly considered the said facts. In para 10 of the impugned judgment, it was held that in the absence of cogent evidence, it cannot be said that applicant No. 2 was taken in adoption by applicant No. 1 and the respondent, therefore not granted maintenance to her. In his cross-examination (page 50), the respondent categorically admitted that he has a House No. 501 at Mumbra and land gut No. 118/B at Motala.

5. Crux of the argument of the learned advocate for the applicants is that the applicants are challenging the impugned

judgment and order on the point that the quantum of maintenance granted by the learned Judge is too meagre. He further canvassed that the learned Judge has not considered that the respondent has a house at Mumbra and agricultural land at Motala, Tq. Buldhana, and erred in observing that the respondent might have earned an amount of Rs. 15000/- per month. He also drew my attention to the 7/12 extract of Gut No. 118/B of Village Khedi, Tq. Motala (Page No. 35) and income tax return/form No.16-A, in the name of the respondent, for the period January to March 2016. A bare perusal of the 7/12 extract reveals that the respondent and his brothers hold 10-Acre-20-R land. Similarly, on perusal of form No. 16-A, it emerges that for the months of January to March, 2016, the respondent had earned an amount of Rs. 47,332/-. Therefore, income tax of Rs. 4733/- was deducted. From the Namuna No. 8, it is apparent that the respondent has possessed the house No. 219 at Grampanchayat Panhera. Furthermore, the respondent has not disputed that he has a house/flat at Mumbra. That itself indicates that the respondent has sufficient means of income to purchase the same or hold the same. If the respondent has no income, buying the property at Mumbra would be difficult. It appears that the respondent failed to maintain the applicants, though he has sufficient means of income. However, the learned Judge, Family Court, has not considered this aspect in its

proper perspective and erred in observing that the respondent has an income of Rs. 15,000/- p.m. only.

6. It is pertinent to note that in view of the mandate in judgment in *Rajnish Vs Neha (2021) 2 SCC 324*, it was incumbent on the respondent-husband to disclose his assets and liabilities. Non-filing of the affidavit leads to drawing an adverse inference against him. Apart from this, as per section 106 of the Indian Evidence Act, the respondent is within knowledge of his income; therefore, it was incumbent on him to state specifically about his income instead of suppressing the same and non-disclosing the said facts, which also leads to drawing an adverse inference.

7. It is pertinent to note that it is the applicant-husband's obligation to maintain his wife. He cannot plead that he is unable to maintain her due to financial constraints as long as he is capable of earning. Moreover, a judicial note can be taken that there are rises in essential commodities. Therefore, the maintenance amount granted to the applicant No.1 appears too meagre to satisfy her daily needs.

8. It is pertinent to note that Section 125 of the Code of Criminal Procedure is a social welfare provision, which must be subjected to an extensive beneficial concern, and this understanding has been extended to maintenance. Similarly, it must be borne in mind that the right to maintenance under Section 125 of the Code of Criminal

Procedure is not a benefit received by the wife but rather a legal and moral duty owed by the husband to maintain his wife. Undisputedly, the wife does not reside with the husband, and the husband does not pay her anything for her maintenance. This itself is sufficient to grant maintenance to her. Therefore, in my view, the said amount needs to be enhanced to Rs. 7000/- instead of Rs. 3000/- as the wife is entitled to live her life as per the living standard of the respondent and as such, interference is required in the impugned judgment and order to that extent.

9. As a result, the criminal revision application stands partly allowed. The impugned judgment and order dated 09-10-2023, passed by the learned Judge, Family Court, Dhule, in Petition No. E-102/2019 is hereby modified to the extent of clause No. 2 of the operative part, i.e., the respondent is directed to pay the maintenance amount of Rs. 7000/- per month to the applicant No. 1 instead of Rs. 3000/- from the date of the petition.

10. Consequently, the respondent is directed to deposit the arrears of the maintenance amount before the learned Family Court, Dhule, within ten weeks from today, failing which, the learned Judge, Family Court, Dhule, shall take appropriate steps to comply with the said order.

[ABHAY J. MANTRI, J.]